

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 457 OF 2017

MR. SHELLEY GONSALVES., ... Petitioner

Versus

MANUEL PHILIP SEQUEIRA AND ANR., ... Respondents

Mr. J. Coelho Pereira, Senior Advocate with Ms. A. Sayed,
Advocate for the Petitioner.

Mr. Prashil Arolkar, Advocate for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 4th October 2017

ORAL ORDER:

The petitioner is challenging the judgment and order dated 23.09.2016, passed by the learned Administrative Tribunal in Land Revenue Appeal No. 235/2004, as also the order dated 26.11.2004, passed by the learned Deputy Collector at Mapusa.

2. The brief facts are that the respondent no. 1 had filed an application before the learned Deputy Collector under Section 61 of the Goa, Daman and Diu Land Revenue Code, 1968 (Code, for short), for partition of the holding namely, Survey No. 128/6 of Village Candolim. The petitioner filed a reply on 26.11.2004, mainly contending that the subject matter is beyond the jurisdiction of the Deputy Collector under Section 61 of the Code and the appropriate Authority is the Civil Court. The learned

Deputy Collector by an order dated 26.11.2004 found that the petitioner (respondent before the Deputy Collector) has not denied the title of the respondent no. 1 (applicant before the Deputy Collector) over Plot-B in the plan annexed to the Deed of Partition dated 21.11.1986, in which Plot-B has been allotted to the respondent no. 1. In that view of the matter, the learned Deputy Collector overruled the objection and referred the matter to the D.S.L.R. to carry out the partition of Plot-B.

3. It appears that the petitioner filed an application for recall of the said order. Before the application for recall could be decided, the petitioner approached the learned Administrative Tribunal, challenging the order dated 26.11.2004. The learned Tribunal by the impugned order dated 23.09.2016 has dismissed the appeal, inter alia on the ground that the order of the Deputy Collector is an interim/preliminary order and that the partition to be effected is subject to confirmation by the Collector.

4. I have heard Shri Pereira, the learned Senior Counsel for the petitioner and Shri Arolkar, the learned Counsel for the respondent no. 1. Perused record.

5. At the outset, it is necessary to mention that Shri Pereira, the learned Senior Counsel for the petitioner, during the course of the arguments at Bar, did not dispute that there is no challenge

to the title of the respondent no. 1 over Plot-B. If, that be so, the contention that the proceedings under Section 61 of the Code are not maintainable, cannot be accepted. Under Section 61 of the Code, the Collector after hearing the co-holders can divide the holding, in accordance with the Rules made under the Code. Rule 2 of the Goa, Daman and Diu Land Revenue (Partition of Holdings) Rules, 1969 (Rules of 1969, for short), provides for the procedure for such partition. Rule 5 of the Rules of 1969 provides that where the Collector does not reject the application, he shall proceed to partition the holding, either personally or by any such agency as he may appoint. Here is a case where the partition is directed to be effected by the D.S.L.R. It is significant to note that under Rule 7 of the Rules of 1969, the Collector is obliged to hear any objections which the parties may raise, after the partition is completed and the Collector can either amend or confirm the partition. In my considered view, the learned Administrative Tribunal has rightly found that whatever exercise would be undertaken by the D.S.L.R. would be subject to the confirmation by the Collector in terms of Rule 7 of the Rules of 1969. The petitioner shall get an opportunity to raise all such contentions as may be permissible in law and facts before the Collector, at the time of confirmation of the partition in accordance with Rule 7 of Rules of 1969.

6. It is contended by the learned Senior Counsel for the petitioner that under Section 61(3) of the Code, the Collector is required to hear the co-holders. In the present case, it is a matter of record that the petitioner had filed a reply, which the Collector has considered. As noticed earlier, the main contention raised in the reply was that the proceedings under Section 61 were not competent as the matter involves an issue of title. As noticed earlier, during the course of the arguments at Bar the title of the respondent no. 1 over Plot-B is not disputed. Thus, it cannot be said that there is any breach of provisions of Section 61(3) of the Code.

7. On carefully going through the impugned orders passed, I do not find that they suffer from any infirmity, so as to require interference under Article 227 of the Constitution of India. The petition is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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